

## Assembly Bill No. 2127

### CHAPTER 917

An act to amend Sections 243.4 and 290.2 of the Penal Code, relating to sex offenders.

[Approved by Governor September 25, 1996. Filed  
with Secretary of State September 26, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2127, Alby. Sex offenders: registration.

(1) Existing law provides that upon conviction of a felony for the commission or attempted commission of sexual battery, the court may enter an order requiring that the defendant register as a sex offender, as specified.

This bill would require the court to enter an order requiring that the defendant register as a sex offender.

(2) Existing law requires any person who is required to register as a sex offender, or who is convicted of murder, or who is convicted of a felony or assault or battery, as specified, and who is discharged or paroled from the state prison, a county jail, or any Youth Authority institution, or is granted probation, or is released from a state hospital where he or she was committed as a mentally disordered sex offender, prior to discharge, parole, the granting of probation, or release, to provide blood specimens and a saliva sample for analysis of deoxyribonucleic acid (DNA) and other genetic typing analysis at the Department of Justice's DNA laboratory and to provide a right thumbprint and a full palm print impression of each hand.

This bill would require these persons to provide these blood specimens, saliva samples, thumbprints, and palm prints regardless of the time of discharge, parole, granting of probation, or release.

*The people of the State of California do enact as follows:*

SECTION 1. Section 243.4 of the Penal Code is amended to read:

243.4. (a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(c) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(d) (1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars (\$3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars (\$2,000) which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Department of Fair Employment and Housing for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount over two thousand dollars (\$2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full.

(2) As used in this subdivision, "touches" means physical contact with another person, whether accomplished directly, through the

clothing of the person committing the offense, or through the clothing of the victim.

(e) As used in subdivisions (a), (b), and (c), “touches” means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(f) As used in this section, the following terms have the following meanings:

(1) “Intimate part” means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) “Sexual battery” does not include the crimes defined in Section 261 or 289.

(3) “Seriously disabled” means a person with severe physical or sensory disabilities.

(4) “Medically incapacitated” means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) “Institutionalized” means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) “Minor” means a person under 18 years of age.

(g) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(h) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

(i) A person who commits a violation of subdivision (a), (b), or (c) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars (\$10,000).

(j) Upon conviction of a felony for a violation or attempted violation of this section committed on or after January 1, 1993, the court shall enter an order requiring that the defendant register pursuant to Section 290.

SEC. 2. Section 290.2 of the Penal Code is amended to read:

290.2. (a) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, or who is convicted of murder in violation of Section 190 or 190.05, or who is convicted of a felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5, and who is committed to a state prison, county jail, or any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is released from a state

hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall be required to provide two specimens of blood and a saliva sample to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing. The county shall make every effort to utilize one location for testing a person under this section.

The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist, or clinical laboratory bioanalyst may withdraw the blood specimens for purposes of this section.

In addition, the subject shall also provide a right thumbprint and a full palm print impression of each hand on a form prescribed by the Department of Justice to be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. The right thumbprint shall be taken at the time of the withdrawal of blood and shall be placed on the form and the blood vial label. The full palm prints shall be taken of subjects who are committed to a state prison, county jail, or any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code. In the case of a person granted probation, the full palm prints shall be taken of the subject by a person and at a location within the county designated for taking the palm print impressions, and at the time the subject is required to reregister as delineated in Section 290f.

(b) The Department of Corrections shall provide full palm prints on a form prescribed by the Department of Justice to the Bureau of Criminal Identification and Information of the Department of Justice to be retained in a file for law enforcement purposes.

(c) The Department of Justice shall provide all blood specimen vials, mailing tubes, labels, and instructions for the collection of the blood specimens, saliva samples, and thumbprints. The specimens and samples shall thereafter be forwarded to the Department of Justice for analysis of deoxyribonucleic acid (DNA) and other genetic typing analysis at the department's DNA laboratory. The Department of Justice may provide samples from these specimens to local public DNA laboratories for law enforcement purposes provided that the other privacy provisions of this section are followed by the local laboratory.

The Department of Justice shall perform DNA analysis and other genetic typing analysis only for law enforcement purposes.



Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for law enforcement purposes.

(d) Additional specimens may be collected pursuant to subdivision (a) and sent to a local public DNA laboratory for DNA analysis and other genetic typing analysis if each of the following conditions are met:

(1) The methodologies and procedures used by the local public DNA laboratory for analysis are the same as those established by the Department of Justice pursuant to subdivision (k).

(2) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(3) All provisions concerning privacy and security enumerated in this section are followed.

(4) The local public DNA laboratory assumes all costs of securing the sample and provides appropriate tubes, labels, and instructions necessary to secure the samples.

(e) The Department of Justice DNA laboratory shall perform genetic typing only for those markers having value for law enforcement purposes.

For purposes of this subdivision, “marker” shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

The Bureau of Criminal Identification and Information of the Department of Justice shall perform analysis of full palm prints only for law enforcement purposes.

(f) (1) The DNA and other genetic typing information shall be filed with the offender’s file maintained by the Sex Registration Unit of the Department of Justice or in a computerized data bank system.

(2) The DNA and other genetic typing information shall not be included in the state summary criminal history information.

(3) The computerized data bank system shall be limited to containing information only on individuals convicted of crimes specified in subdivision (a), or evidence accumulated from crime scenes during ongoing investigations and believed to have been left by a person suspected of having committed a violent felony specified in subdivision (c) of Section 667.5 or an offense specified in Section 290. Evidence accumulated pursuant to this provision from any crime scene with respect to a particular person shall be stricken from the data bank when it is determined that the person is no longer a suspect in the case.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal

Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

The full palm print file shall be limited to containing information only on individuals convicted of crimes specified in subdivision (a). These full palm prints shall be maintained until the subject is no longer required to register pursuant to Section 290.

(g) The DNA and other genetic typing information, and full palm prints, shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, and district attorneys' offices, at the request of the agency, except as specified in this section. Dissemination of this information to law enforcement agencies and district attorneys' offices outside the state shall be done in conformity with the provisions of this section.

(h) Any person who knowingly discloses DNA or other genetic typing information or full palm print comparison results developed pursuant to this section to unauthorized individuals or agencies, or for other than law enforcement purposes, shall be guilty of a misdemeanor.

(i) Furnishing DNA or other genetic typing information or full palm print comparison results to defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(j) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized data bank system, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is also not a violation of this section to include information obtained from a file as follows: (1) in a transcript or record of a judicial proceeding, or (2) in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(k) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology.

